

**ASSEMBLY BILL**

**No. 2163**

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**Introduced by Assembly Member Knight**

February 23, 2012

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An act to amend Sections 21180, 21183, 21185, and 21186 of, and to repeal Sections 21182, 21184, 21189.1, and 21189.3 of, the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 2163, as introduced, Knight. Environmental quality: California Environmental Quality Act: judicial review.

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

The Jobs and Economic Improvement Through Environmental Leadership Act of 2011 establishes, until January 1, 2015, an alternative method for the preparation of the record of proceedings and alternative judicial review procedures for an action challenging the certification of an EIR for a project meeting specified requirements, including the requirement that the project will result in a minimum investment of \$100,000,000, the project is located at an infill site, and the project has

been certified by the Governor as an environmental leadership development project. The act also requires a residential, retail, commercial, sports, cultural, entertainment, or recreation use project that qualifies for certification to be certified as LEED silver or better by the United States Green Building Council.

This bill would extend indefinitely the use of the alternative method for the preparation of the record of proceedings and the alternative judicial review procedures. The bill would expand projects that would be eligible for those alternative processes to include, among others, commercial development projects exceeding 125,000 square feet, residential development projects exceeding 50 units, and projects with over 20 acres of cultivated development. The bill would repeal the requirements that the project will result in a minimum investment of \$100,000,000, be located in an infill site, and be certified by the Governor. The bill would instead require a residential, retail, commercial, sports, cultural, entertainment, or recreation use project that qualifies for these alternative processes to be designed to meet or exceed the standards for the CalGreen Tier 1 building as provided in the California Green Building Standard. Because this bill would expand the use of the alternative method for preparing the record of proceedings, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 21180 of the Public Resources Code is
- 2 amended to read:
- 3 21180. For the purposes of this chapter, the following terms
- 4 shall have the following meanings:
- 5 (a) "Applicant" means a public or private entity or its affiliates,
- 6 or a person or entity that undertakes a public works project, that
- 7 proposes a project and its successors, heirs, and assignees.
- 8 (b) "Commercial use project" means a project for industrial,
- 9 office, or retail use that exceeds 125,000 square feet of space.

(b) ~~“Environmental leadership development project,” “leadership project,” or “project”~~

(c) *“Project” means a project as described in Section 21065 and that is one the following:*

(1) A residential, retail, commercial, sports, cultural, entertainment, or recreational use project that ~~is certified as LEED silver or better by the United States Green Building Council and, where applicable, that achieves~~ *satisfies all of the following:*

(A) *The project is designed to meet or exceed the standards of the CalGreen Tier 1 building as set forth in the California Green Building Standards (Part 11 of Title 24 of the California Code of Regulations).*

(B) *The project will achieve a 10-percent greater standard for transportation efficiency than for comparable projects.* ~~These projects must be located on an infill site. For~~

(C) *For a project that is within a metropolitan planning organization for which a sustainable communities strategy or alternative planning strategy is in effect, the infill project shall be consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy, for which the State Air Resources Board, pursuant to subparagraph (H) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code, has accepted a metropolitan planning organization’s determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets.*

(2) A clean renewable energy project that generates electricity exclusively through wind or solar, but not including waste incineration or conversion.

(3) A clean energy manufacturing project that manufactures products, equipment, or components used for renewable energy generation, energy efficiency, or for the production of clean alternative fuel vehicles.

(d) *“Recreational use project” means a project with over 20 acres of cultivated development.*

(e) *“Residential use project” means a project for residential use that is greater than 50 units.*

~~(e)~~

1 (f) “Transportation efficiency” means the number of vehicle  
2 trips by employees, visitors, or customers of the residential, retail,  
3 commercial, sports, cultural, entertainment, or recreational use  
4 project divided by the total number of employees, visitors, and  
5 customers.

6 SEC. 2. Section 21182 of the Public Resources Code is  
7 repealed.

8 ~~21182. A person proposing to construct a leadership project~~  
9 ~~may apply to the Governor for certification that the leadership~~  
10 ~~project is eligible for streamlining provided by this chapter. The~~  
11 ~~person shall supply evidence and materials that the Governor deems~~  
12 ~~necessary to make a decision on the application. Any evidence or~~  
13 ~~materials shall be made available to the public at least 15 days~~  
14 ~~before the Governor certifies a project pursuant to this chapter.~~

15 SEC. 3. Section 21183 of the Public Resources Code is  
16 amended to read:

17 ~~21183. The Governor may certify a leadership project for~~  
18 ~~streamlining pursuant to this chapter if all the following conditions~~  
19 ~~are met:~~

20 ~~(a) The project will result in a minimum investment of one~~  
21 ~~hundred million dollars (\$100,000,000) in California upon~~  
22 ~~completion of construction.~~

23 ~~(b) The project creates high-wage, highly skilled jobs that pay~~  
24 ~~prevailing wages and living wages and provide construction jobs~~  
25 ~~and permanent jobs for Californians, and helps reduce~~  
26 ~~unemployment.~~

27 ~~(c) The~~

28 ~~21183. (a) The project does~~ *shall* not result in any net  
29 additional emission of greenhouse gases, including greenhouse  
30 gas emissions from employee transportation, as determined by the  
31 State Air Resources Board pursuant to Division 25.5 (commencing  
32 with Section 38500) of the Health and Safety Code.

33 ~~(d)~~

34 ~~(b) The project applicant has entered~~ *shall enter* into a binding  
35 and enforceable agreement that all mitigation measures required  
36 pursuant to this division to certify the project under this chapter  
37 shall be conditions of approval of the project, and those conditions  
38 will be fully enforceable by the lead agency or another agency  
39 designated by the lead agency. In the case of environmental  
40 mitigation measures, the applicant agrees, as an ongoing obligation,

1 that those measures will be monitored and enforced by the lead  
2 agency for the life of the obligation.

3 (e)

4 (c) The project applicant ~~agrees to~~ *shall* pay the costs of the  
5 Court of Appeal in hearing and deciding any case, including  
6 payment of the costs for the appointment of a special master if  
7 deemed appropriate by the court, in a form and manner specified  
8 by the Judicial Council, as provided in the Rules of Court adopted  
9 by the Judicial Council pursuant to subdivision (f) of Section  
10 21185.

11 (f)

12 (d) The project applicant ~~agrees to~~ *shall* pay the costs of  
13 preparing the administrative record for the project concurrent with  
14 review and consideration of the project pursuant to this division,  
15 in a form and manner specified by the lead agency for the project.

16 SEC. 4. Section 21184 of the Public Resources Code is  
17 repealed.

18 21184. (a) ~~The Governor may certify a project for streamlining~~  
19 ~~pursuant to this chapter if it complies with the conditions specified~~  
20 ~~in Section 21183.~~

21 (b) (1) ~~Prior to certifying a project, the Governor shall make a~~  
22 ~~determination that each of the conditions specified in Section 21183~~  
23 ~~has been met. These findings are not subject to judicial review.~~

24 (2) (A) ~~If the Governor determines that a leadership project is~~  
25 ~~eligible for streamlining pursuant to this chapter, he or she shall~~  
26 ~~submit that determination, and any supporting information, to the~~  
27 ~~Joint Legislative Budget Committee for review and concurrence~~  
28 ~~or nonconcurrence.~~

29 (B) ~~Within 30 days of receiving the determination, the Joint~~  
30 ~~Legislative Budget Committee shall concur or noneconcur in writing~~  
31 ~~on the determination.~~

32 (C) ~~If the Joint Legislative Budget Committee fails to concur~~  
33 ~~or noneconcur on a determination by the Governor within 30 days~~  
34 ~~of the submittal, the leadership project is deemed to be certified.~~

35 (e) ~~The Governor may issue guidelines regarding application~~  
36 ~~and certification of projects pursuant to this chapter. Any guidelines~~  
37 ~~issued pursuant to this subdivision are not subject to the rulemaking~~  
38 ~~provisions of the Administrative Procedure Act (Chapter 3.5~~  
39 ~~(commencing with Section 11340) of Part 1 of Division 3 of Title~~  
40 ~~2 of the Government Code).~~

SEC. 5. Section 21185 of the Public Resources Code is amended to read:

21185. (a) Notwithstanding any other law, any action or proceeding alleging that a public agency ~~or~~ has approved or is undertaking a leadership project ~~certified by the Governor that meets the requirements of Section 21183~~ in violation of this division shall be conducted in accordance with the following streamlining benefits:

(1) The action or proceeding shall be filed in the Court of Appeal with geographic jurisdiction over the project.

(2) ~~Any~~ A party bringing such a claim shall also file concurrently any other claims alleging that a public agency has granted land use approvals for the leadership project in violation of the law. The Court of Appeal shall have original jurisdiction over all those claims.

(3) The Court of Appeal shall issue its decision in the case within 175 days of the filing of the petition.

(4) The court may appoint a master to assist the court in managing and processing the case.

(5) The court may grant extensions of time only for good cause shown and in order to promote the interests of justice.

(b) On or before July 1, 2012, the Judicial Council shall adopt Rules of Court to implement this chapter.

SEC. 6. Section 21186 of the Public Resources Code is amended to read:

21186. Notwithstanding any other law, the preparation and certification of the ~~administrative~~ record *of proceedings* for a leadership project ~~certified by the Governor~~ shall be performed in the following manner:

(a) The lead agency for the project shall prepare the administrative record pursuant to this division concurrently with the administrative process.

(b) All documents and other materials placed in the administrative record shall be posted on, and be downloadable from, an Internet Web site maintained by the lead agency commencing with the date of the release of the draft environmental impact report.

(c) The lead agency shall make available to the public in a readily accessible electronic format the draft environmental impact report and all other documents submitted to, or relied on by, the

1 lead agency in the preparation of the draft environmental impact  
2 report.

3 (d) A document prepared by the lead agency or submitted by  
4 the applicant after the date of the release of the draft environmental  
5 impact report that is a part of the record of the proceedings shall  
6 be made available to the public in a readily accessible electronic  
7 format within five business days after the document is released or  
8 received by the lead agency.

9 (e) The lead agency shall encourage written comments on the  
10 project to be submitted in a readily accessible electronic format,  
11 and shall make any comment available to the public in a readily  
12 accessible electronic format within five days of its receipt.

13 (f) Within seven business days after the receipt of any comment  
14 that is not in an electronic format, the lead agency shall convert  
15 that comment into a readily accessible electronic format and make  
16 it available to the public in that format.

17 (g) The lead agency shall certify the final administrative record  
18 within five days of its approval of the project.

19 (h) Any dispute arising from the administrative record shall be  
20 resolved by the Court of Appeal pursuant to Section 21185.

21 SEC. 7. Section 21189.1 of the Public Resources Code is  
22 repealed.

23 ~~21189.1. (a) If a lead agency fails to certify an environmental~~  
24 ~~impact report for a leadership project subject to this chapter on or~~  
25 ~~before June 1, 2014, this chapter shall not apply to that project.~~  
26 ~~The lead agency shall notify the Secretary of the Natural Resources~~  
27 ~~Agency by July 1, 2014, if an environmental impact report subject~~  
28 ~~to this chapter has not been certified by that date.~~

29 ~~(b) If, prior to June 1, 2014, a certification issued pursuant to~~  
30 ~~this chapter has not been used or the time period during which an~~  
31 ~~action or proceeding, for purposes of Section 21185, may be filed~~  
32 ~~under this chapter has not elapsed, the certification expires and is~~  
33 ~~no longer valid.~~

34 SEC. 8. Section 21189.3 of the Public Resources Code is  
35 repealed.

36 ~~21189.3. This chapter shall remain in effect until January 1,~~  
37 ~~2015, and as of that date is repealed unless a later enacted statute~~  
38 ~~extends or repeals that date.~~

39 SEC. 9. No reimbursement is required by this act pursuant to  
40 Section 6 of Article XIII B of the California Constitution because

- 1 a local agency or school district has the authority to levy service
- 2 charges, fees, or assessments sufficient to pay for the program or
- 3 level of service mandated by this act, within the meaning of Section
- 4 17556 of the Government Code.